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DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Case No. 90 CV 3966, Division 9

HOLLAND & HART
William E. Mooz, Jr.

ORDER DENYING PLAINTIFF'S MOTION FOR AMENDMENT OF FINDINGS AND JUDGMENT

WESTERN STATES MINERALS CORPORATION, a Utah corporation,

Plaintiff,

v.

ASOMA (UTAH), INC., a Delaware Corporation, JUMBO MINING CO., an unincorporated association, ED B. KING, a/k/a E.B. KING, and JANET KING,

Defendants.

THIS MATTER comes before the court on Plaintiff's Motion for Amendment of Findings and Judgment and Plaintiff's Brief in Support of Motion for Amendment of Findings and Judgment, filed with the court on May 27, 1994. Defendants' Response to Motion for Amendment of Findings and Judgment was filed with the court on June 27, 1994. Plaintiff's Reply Brief in Support of Motion for Amendment of Findings and Judgment was filed on July 12, 1994. Having read the motion, response and reply, and having reviewed the file the court finds and orders as follows.

On May 2, 1994 the parties appeared for trial before the court on whether defendants had breached a contract with plaintiff. On May 16, 1994 the court issued its written findings and conclusions and entered judgment. Plaintiff now moves the court to amend its May 16, 1994 findings and judgment, claiming that the court erred in not awarding plaintiff damages for attorney fees and personnel costs that plaintiff claims were incurred as a result of defendants' breach of contract, and that the court erred in not awarding damages for plaintiff's claim of breach of implied covenant of good faith.

Plaintiff claims that the court in its May 16, 1994 findings and judgment found that defendants had breached their contract with plaintiff and that plaintiff had incurred expenses as a result of this breach. Plaintiff claims that the court refused to award as damages plaintiff's expenses for attorney fees and personnel costs solely because the court found that plaintiff had failed to establish the reasonableness of these expenses. Plaintiff argues that because the court found plaintiff had incurred damages as a result of defendants' breach of contract, the court erred in failing to award plaintiff its reasonable expenses.

The court's May 16, 1994 findings and judgment does state that plaintiff "presented evidence in support of its claim for damages for breach of contract". Court's May 16, 1994 Findings of Fact and Conclusions of Law and Judgment, at 5. Plaintiff contends on the basis of this statement that the court found that plaintiff presented sufficient evidence to show plaintiff incurred its claimed damages as a result of defendant's breach. However, the court's May 16, 1994 judgment does not find, nor do I now find, nor do I recall finding at the court's May 2, 1994 hearing, that plaintiff presented sufficient evidence to show plaintiff incurred its claimed damages. With respect to the plaintiff's claim for attorney fees, the court's judgment states that the court "was not persuaded that it is reasonable to allow those items as damages". With respect to plaintiff's claim for personnel expenses and other damages, the court's judgment found "no evidence establishing that those costs and amounts were incurred as a consequence of defendant's breach". With respect to plaintiff's claims for bond premiums, the court's judgment found that "there was not enough definite evidence to establish that the bond premiums can be categorized as damages for the breach of contract that was proven". Court's May 16, 1994 Findings of Fact and Conclusions of Law and Judgment, at 6.

A plaintiff is required to establish the fact of damage "by a preponderance of the evidence". Tull v. Gundersons, Inc., 709 P.2d 940, 943 (Colo. 1985). Because the court's May 16, 1994 judgment found that plaintiff had not sufficiently proven it incurred its claimed damages as a result of defendant's breach of contract, I find the court's May 16, 1994 judgment properly declined to award plaintiff attorney fees and personnel expenses on plaintiff's claim of breach of contract. I further find the court's May 16, 1994 judgment properly declined to award plaintiff money damages for its claim of breach of implied covenant of good faith. Plaintiff's Motion for Amendment of Findings and Judgment is DENIED.

SO ORDERED this 15 day of July, 1994.

BY THE COURT:



Tom Woodford
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I have on this 18 day of July, 1994, placed a true and correct copy of the foregoing ORDER in the United States mail, postage prepaid and addressed to the following:

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